

EXHIBIT G

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF DELAWARE

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F'REAL FOODS, LLC and RICH : CIVIL ACTION
PRODUCTS CORPORATION, :
 :
Plaintiffs, :
 :
vs. :
 :
HAMILTON BEACH BRANDS, :
INC., HERSHEY CREAMERY :
COMPANY and PAUL MILLS :
d/b/a MILLS BROTHERS :
MARKETS, :
 : NO. 16-41 (CFC)
Defendants. : CONSOLIDATED

- - -

Wilmington, Delaware
Thursday, November 8, 2018
2:05 o'clock, p.m.

- - -

BEFORE: HONORABLE COLM F. CONNOLLY, U.S.D.C.J.

- - -

APPEARANCES:

MORRIS, NICHOLS, ARSHT & TUNNELL LLP
BY: RODGER D. SMITH, ESQ. and
MICHAEL J. FLYNN, ESQ.

-and-

Valerie J. Gunning
Official Court Reporter

1 corresponding structure for these functions, one must turn
2 to column 7, lines, or at least lines 43 through 47 of the
3 specification. Section 112(f) of title 35, provides in
4 relevant part that an element in a claim for a combination
5 may be expressed as a means or step for performing a
6 specified function without the recital of structure. Such
7 claim shall be construed to cover the corresponding
8 structure described in the specification.

9 In this case, all parties agree, and Judge
10 Sleet held, that the corresponding structure is found in
11 column 7. Where I might part ways with Judge Sleet,
12 however, is in limiting the description of the structure to
13 lines 43 through 47. I am concerned that the description of
14 the structure begins at line 36 and extends through line 47.
15 I note that both parties in their claim construction
16 briefing directed the Court's attention to lines 36 through
17 47 to identifying the corresponding structure. I am
18 inclined to conclude that all of those lines describe the
19 corresponding structure, and that structure would appear to
20 be consistent with what was proposed by defendants.

21 So what I am going to do is, I'm going to grant
22 in part the motion for reconsideration insofar as it
23 concerns this last corresponding structure that I've just
24 described, and I am going to ask the parties to brief to me
25 in no more than three pages by the end of next week the

1 issue of whether I should look to lines 36 through 47 in
2 their entirety to determine the corresponding structure or
3 more limited lines in the disclosure or elsewhere to
4 determine what, in fact, is the corresponding structure to
5 the aeration means and aeration elements terms. Otherwise,
6 I will deny the motion for reconsideration.

7 Now, let me just ask the parties, is it clear
8 what I'm looking for with respect to this latter term?

9 MR. SMITH: Your Honor, would you prefer
10 three-page letters?

11 THE COURT: Yes.

12 MR. SMITH: Thank you.

13 THE COURT: And three-page letters. Actually,
14 I'm going to change that. I'm going to need one letter,
15 750 words, 14-point font. This should be very short.

16 MR. SMITH: Just to be clear, one letter from
17 each side?

18 THE COURT: One letter from each side. I
19 normally don't like simultaneous briefing, but frankly, I
20 was inclined -- I mean, here's where I am. I'm hesitant to
21 say Judge Sleet clearly erred in holding as he did, and, in
22 fact, as I think -- well, I will get to it in a second. On
23 the other hand, I'm mindful that this is all going to be
24 reviewed de novo by the Federal Circuit and I've got to try
25 the case and I've got to make sure that if we're instructing

1 **APPEARANCES (Continued) :**

2 **SIDEMAN & BANCROFT LLP**

3 **BY: GUY W. CHAMBERS, ESQ.**

4 **(San Francisco, California)**

5 **Counsel for Plaintiffs**

6 **f'real Foods, LLC and Rich Products**
7 **Corporation**

8 **DRINKER BIDDLE & REATH LLP**

9 **BY: FRANCIS DiGIOVANNI, ESQ.**

10 **-and-**

11 **DRINKER BIDDLE & REATH LLP**

12 **BY: WILLIAM S. FOSTER, JR., ESQ.**

13 **(Washington, D.C.)**

14 **Counsel for Defendant**

15 **- - -**

1 inclined to come out and here tell the defendants that
2 directly and prohibit them from filing any more motions to
3 reconsider, because they basically reargued or reformatted,
4 changed their arguments. Because I dived into the third
5 argument and I had concerns, which are very narrow, and you
6 may educate me and make me very comfortable that you're
7 right, I thought I would go ahead and rule, again mindful of
8 the de novo appellate review standard that exists.

9 Let me be really clear. I'm not going to
10 entertain any other claim construction rearguments. It's
11 not going to happen.

12 Now, my understanding also from what you are
13 saying is that probably the experts' testimony is really
14 going to indefiniteness and maybe I'm wrong on that. I will
15 find out. But I'm not going to entertain any more claim
16 construction arguments. All right?

17 MR. CHAMBERS: Your Honor, that's exactly what I
18 was -- was hoping the Court would say.

19 THE COURT: Good. And both parties, but
20 especially the defendants, ought to be mindful on any issue
21 about bringing a motion for reconsideration. Anyway, you
22 got lucky, but I do think that if you are going to bring
23 motions along the lines of the first two arguments, it's
24 just not going to help you or your clients going forward.
25 We've got too much work to have you just relitigate issues

1 claims. I want to hear from the other side. Plaintiffs had
2 welcomed it.

3 Do you want to discuss that?

4 MR. FOSTER: Your Honor, we asked in the status
5 report for a reduction to 12 claims. Early in this case we
6 asked for a reduction of claims before a Markman. Judge
7 Sleet put on the calendar the parties' meet and confer to
8 reduce the number of claims. Plaintiffs did not reduce the
9 number of claims before a Markman.

10 If you look at most of the form orders that are
11 out there that other judges have done in this court. The
12 Federal Circuit rules --

13 THE COURT: I'm familiar with all of that. I'm
14 looking at specifics. Do I have to go back to the status
15 report? That's where you still are?

16 MR. FOSTER: Your Honor, twelve claims, no more
17 than five per patent.

18 THE COURT: What do you guys think?

19 MR. CHAMBERS: Your Honor, first of all, that
20 was a false statement. We did reduce the claims by seven in
21 the final claim construction, excuse me, the final
22 infringement contentions. We dropped claims 5, 7 and 10,
23 17, 23, 24 and 26 of the '377 patent.

24 THE COURT: Okay.

25 MR. CHAMBERS: So that's just false.

1 THE COURT: Hold up. I generally don't like
2 this, but can you respond directly to that? Did they, in
3 fact, drop all of those claims in the infringement
4 contentions?

5 MR. FOSTER: The final -- they did, they did
6 drop --

7 THE COURT: Was that infringement contention
8 served on you prior to the Markman hearing?

9 MR. FOSTER: The final ones, Your Honor?

10 THE COURT: Where the claims --

11 MR. FOSTER: We're after Markman.

12 THE COURT: Okay.

13 MR. FOSTER: The fine.

14 THE COURT: So now, what's your name again,
15 sir?

16 MR. CHAMBERS: Chambers, Guy Chambers.

17 THE COURT: When did you serve the final
18 infringement contentions on them when you dropped the
19 claims?

20 MR. CHAMBERS: Well, that was actually -- here.
21 I will get the date for Your Honor, but that could have been
22 after Markman.

23 THE COURT: All right. Well, look. You know
24 what, before you start calling somebody for making false
25 statements, I think you'd want to know those facts.

15:55:19 1 MR. CHAMBERS: All right. Well, we did drop a

15:55:21 2 number of claims. We did drop a number of claims.

15:55:23 3 THE COURT: Okay.

15:55:23 4 MR. CHAMBERS: That was the false statement.

15:55:25 5 THE COURT: Just a suggestion to you.

15:55:26 6 MR. CHAMBERS: Okay.

15:55:26 7 THE COURT: All right. You don't do yourself
15:55:27 8 any good by alleging serious allegations against the other
15:55:33 9 side.

15:55:33 10 Okay. I would take, and I did take as a lawyer
15:55:36 11 very seriously being accused of making a false statement to
15:55:40 12 the Court and you just leveled that and now it turns out you
15:55:43 13 don't know the facts.

15:55:44 14 MR. CHAMBERS: Your Honor, I will apologize for
15:55:46 15 the part about after the claim construction. The part that
15:55:50 16 I heard was we didn't drop the number of claims, which we
15:55:54 17 did drop the number of claims. And that's what that was,
15:55:58 18 the part I was addressing.

15:55:59 19 THE COURT: If you are going to accuse somebody
15:56:01 20 of making a false statement, listen carefully to what they
15:56:04 21 say. All right?

15:56:05 22 MR. CHAMBERS: All right. I apologize for that
15:56:07 23 part of my statement.

15:56:07 24 THE COURT: All right. So you dropped a number
15:56:10 25 of claims somewhat. You didn't drop it going into the

1 Markman hearing. And that comment applies to everybody. I
2 mean, I don't have to apply it to the gentlemen from
3 Delaware here, but to both of you, please be careful. All
4 right.

5 So let's try to solve the problem. All right.
6 Do you have a proposal about reducing claims?

7 MR. CHAMBERS: Yes. We had proposed during the
8 meet and confer that we currently have 29 claims asserted.
9 They have 18 references and 83 combinations asserted.

10 THE COURT: All right.

11 MR. CHAMBERS: That's current. So what we had
12 proposed during the meet and confer, I believe it was on
13 Tuesday, is after the reconsideration decision, we drop down
14 to 24 claims and they drop to 15 references, 50
15 combinations. And then after the summary judgment motion,
16 we drop to 16 claims and they dropped to 12 references and
17 30 combinations.

18 THE COURT: Okay. So it seems to me you have to
19 drop before we get to summary judgment if we're really going
20 to have our handle on this case.

21 So do you want me to give you guys one more
22 opportunity to see if you can come up with a solution to
23 reduce the claims in a cooperative way or do you want me to
24 just pick a number?

25 MR. CHAMBERS: We'll be glad to meet and confer

1 with them about it.

2 Now --

3 THE COURT: Do you have Delaware counsel
4 involved in meet and confers?

5 MR. CHAMBERS: Definitely.

6 THE COURT: All right. I would really encourage
7 that, and not just in the final discussion. I would
8 encourage it at the early stages of the discussion.

9 MR. DiGIOVANNI: Your Honor, we can include the
10 meet and confer in next Friday's letter.

11 THE COURT: Don't include it. If you come up
12 with a solution, file it separately. That would be a nice
13 one-page letter jointly filed.

14 Why don't I hold off on that, and here's what
15 I'm going to do. I'm going to wait until I get those
16 submissions next Friday before I issue the final scheduling
17 order. So I'm also going to incorporate in the scheduling
18 order a procedure for summary judgment so just kind have
19 been ready for that. And I need a Word version if you have
20 not submitted it already of the proposed scheduling order
21 from the plaintiffs. Please take care of it, Mr. Flynn.

22 Basically though what I'm going to do is, in
23 addition to the Word limitations, I'm going to require a
24 concise statement of facts be submitted with each summary
25 judgment motion, and you'll see it from the procedures, you